

AMENDED IN ASSEMBLY MAY 8, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1089

Introduced by Assembly Member Hernandez

(Coauthors: Assembly Members Dymally, Jeffries, and Portantino)

February 23, 2007

An act to add Chapter 1.6 (commencing with Section 10287) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1089, as amended, Hernandez. Public contracts: Sudan.

The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services, and other state agencies in overseeing and implementing state contracting procedures and policies.

This bill would require the Department of General Services to prepare, as specified, a list of *scrutinized* companies, as defined, that ~~has~~ *have specified* ties to the government of Sudan, as defined, with which the state has a contract or could possibly have a contract with in the future and to present that list to the Legislature by April 1, 2008. This bill would prohibit a state agency from entering into a contract, as specified, *of \$100,000 or more* with a company that is on the Department of General Services's list of *scrutinized* companies that ~~has~~ *have* ties to the government of Sudan. The bill also would require each prospective bidder for any state contract to ~~certify~~ *provide a statement* under penalty

of perjury ~~that the bidder does not have ties to~~ *disclosing all business operations between the bidder and the government of Sudan.*

By requiring prospective bidders to certify that the questionnaires have been signed under penalty of perjury, this bill would expand the scope of existing crime of perjury, and would thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 1.6 (commencing with Section 10287)
2 is added to Part 2 of Division 2 of the Public Contract Code, to
3 read:

4
5 CHAPTER 1.6. DARFUR ACCOUNTABILITY ACT
6

7 10287. The Legislature hereby finds and declares all of the
8 following:

9 (a) On July 23, 2004, the United States Congress declared “the
10 atrocities unfolding in Darfur, Sudan, are genocide.”

11 (b) On September 21, 2004, addressing the United Nations
12 General Assembly, President George W. Bush affirmed the
13 Secretary of State’s finding and stated, “[A]t this hour, the world
14 is witnessing terrible suffering and horrible crimes in the Darfur
15 region of Sudan, crimes my government has concluded are
16 genocide.”

17 (c) On December 7, 2004, the United States Congress noted
18 that the genocidal policy in Darfur has led to reports of “systematic
19 rape of thousands of women and girls, the abduction of women
20 and children, and the destruction of hundreds of ethnically African
21 villages, including the poisoning of their wells and the plunder of
22 their crops and cattle upon which the people of such villages sustain
23 themselves.”

1 (d) Also on December 7, 2004, Congress found that “the
2 Government of Sudan has restricted access by humanitarian and
3 human rights workers to the Darfur area through intimidation by
4 military and security forces, and through bureaucratic and
5 administrative obstruction, in an attempt to inflict the most
6 devastating harm on those individuals displaced from their villages
7 and homes without any means of sustenance or shelter.”

8 (e) On September 25, 2006, Congress reaffirmed that “the
9 genocide unfolding in the Darfur region of Sudan is characterized
10 by acts of terrorism and atrocities directed against civilians,
11 including mass murder, rape, and sexual violence committed by
12 the Janjaweed and associated militias with the complicity and
13 support of the National Congress Party-led faction of the
14 Government of Sudan.”

15 (f) On September 26, 2006, the United States House of
16 Representatives stated that “an estimated 300,000 to 400,000
17 people have been killed by the Government of Sudan and its
18 Janjaweed allies since the [Darfur] crisis began in 2003, more than
19 2,000,000 people have been displaced from their homes, and more
20 than 250,000 people from Darfur remain in refugee camps in
21 Chad.”

22 (g) The Federal Government has imposed sanctions against the
23 Government of Sudan since 1997. These sanctions are monitored
24 through the United States Treasury Department’s Office of Foreign
25 Assets Control (OFAC).

26 (h) Since 1993, the United States Secretary of State has
27 determined Sudan is a country whose government has repeatedly
28 provided support for acts of international terrorism, thereby
29 restricting United States assistance, defense exports and sales, and
30 financial and other transactions with the Government of Sudan.

31 (i) The Darfur crisis represents the first time the United States
32 has labeled ongoing atrocities a genocide.

33 10287.1. As used in this chapter, the following apply:

34 (a) “Business operations” means engaging in commerce in any
35 form in Sudan, including by acquiring, developing, maintaining,
36 owning, selling, possessing, leasing, or operating equipment,
37 facilities, personnel, products, services, personal property, real
38 property, or any other apparatus of business or commerce.

39 (b) “Company” means any sole proprietorship, organization,
40 association, corporation, partnership, joint venture, limited

1 partnership, limited liability partnership, limited liability company,
2 or other entity or business association, including all wholly owned
3 subsidiaries, majority-owned subsidiaries, parent companies, or
4 affiliates of such entities or business associations, that exists for
5 profitmaking purposes.

6 (c) “Complicit” means taking actions during any preceding
7 20-month period that have directly supported or promoted the
8 genocidal campaign in Darfur, including, but not limited to,
9 preventing Darfur’s victimized population from communicating
10 with each other, encouraging Sudanese citizens to speak out against
11 an internationally approved security force for Darfur, actively
12 working to deny, cover up, or alter the record on human rights
13 abuses in Darfur, or other similar actions.

14 (d) “Government of Sudan” means the government in Khartoum,
15 Sudan, which is led by the National Congress Party, formerly
16 known as the National Islamic Front, or any successor government
17 formed on or after October 13, 2006, including the coalition
18 National Unity Government agreed upon in the Comprehensive
19 Peace Agreement for Sudan and does not include the regional
20 government of southern Sudan.

21 (e) “Inactive business operations” means the continued holding
22 or renewal of rights to property previously operated for the purpose
23 of generating revenues but not presently deployed for such purpose.

24 (f) “Marginalized populations of Sudan” include, but are not
25 limited to, the portion of the population in the Darfur region that
26 has been genocidally victimized; the portion of the population of
27 southern Sudan victimized by Sudan’s North-South civil war; the
28 Beja, Rashidiya, and other similarly underserved groups of eastern
29 Sudan; the Nubian and other similarly underserved groups in
30 Sudan’s Abyei, Southern Blue Nile, and Nuba Mountain regions;
31 and the Amri, Hamadab, Manasir, and other similarly underserved
32 groups of northern Sudan.

33 (g) “Military equipment” means weapons, arms, military
34 supplies, and equipment that readily may be used for military
35 purposes, including, but not limited to, radar systems or
36 military-grade transport vehicles, or supplies or services sold or
37 provided directly or indirectly to any force actively participating
38 in armed conflict in Sudan.

39 (h) “Mineral extraction activities” include exploring, extracting,
40 processing, transporting, or wholesale selling or trading of

1 elemental minerals or associated metal alloys or oxides (ore),
2 including gold, copper, chromium, chromite, diamonds, iron, iron
3 ore, silver, tungsten, uranium, and zinc, as well as facilitating such
4 activities, including by providing supplies or services in support
5 of such activities.

6 (i) “Oil-related activities” include, but are not limited to, owning
7 rights to oil blocks; exporting, extracting, producing, refining,
8 processing, exploring for, transporting, selling, or trading of oil;
9 constructing, maintaining, or operating a pipeline, refinery, or
10 other oil-field infrastructure; and facilitating such activities,
11 including by providing supplies or services in support of such
12 activities, provided the mere retail sale of gasoline and related
13 consumer products shall not be considered oil-related activities.

14 (j) “Power production activities” means any business operation
15 that involves a project commissioned by the National Electricity
16 Corporation (NEC) of Sudan or other similar government of Sudan
17 entity whose purpose is to facilitate power generation and delivery,
18 including, but not limited to, establishing power-generating plants
19 or hydroelectric dams, selling or installing components for the
20 project, providing service contracts related to the installation or
21 maintenance of the project, as well as facilitating such activities,
22 including by providing supplies or services in support of such
23 activities.

24 ~~(k) “Scrutinized company” means all of the following:~~

25 ~~(1) A company that has business operations that involve~~
26 ~~contracts with and/or provides supplies or services to the~~
27 ~~government of Sudan, companies in which the government of~~
28 ~~Sudan has any direct or indirect equity share, government of~~
29 ~~Sudan-commissioned consortia or projects, or companies involved~~
30 ~~in government of Sudan-commissioned consortia or projects.~~

31 ~~(A) A company that has more than 10 percent of the company’s~~
32 ~~revenues or assets linked to Sudan involve oil-related activities or~~
33 ~~mineral extraction activities.~~

34 ~~(B) A company that has less than 75 percent of the company’s~~
35 ~~revenues or assets linked to Sudan involve contracts with and/or~~
36 ~~provision of oil-related or mineral extracting products or services~~
37 ~~to the regional government of southern Sudan or a project or~~
38 ~~consortium created exclusively by that regional government.~~

~~(C) A company that has more than 10 percent of the company's revenues or assets linked to Sudan involve power production activities.~~

~~(D) A company that has less than 75 percent of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan.~~

~~(R) Failed to take substantial action.~~

~~(2) Is complicit in the Darfur genocide.~~

(k) "Scrutinized company" means a company that meets the criteria set forth either in paragraph (1) or paragraph (2):

(1) The company is complicit in the Darfur genocide.

(2) (A) The company has business operations that involve contracts with, or the provision of supplies or services to, or business operations that involve contracts with and the provision of supplies and services to, any of the following:

(i) The government of Sudan.

(ii) Companies in which the government of Sudan has any direct or indirect equity share.

(iii) Government of Sudan-commissioned consortia or projects.

(iv) Companies involved in government of Sudan-commissioned consortia or projects.

(B) The company meets all of the criteria of either clause (i) or clause (ii):

(i) (I) More than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities.

(II) Less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with, or the provision of oil-related or mineral extracting products or services to, or involve contracts with and the provision of oil-related or mineral extracting products or services to, the regional government of southern Sudan or a project or consortium created exclusively by that regional government.

(ii) (I) More than 10 percent of the company's revenues or assets linked to Sudan involve power production activities.

(II) Less than 75 percent of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan.

(C) The company has failed to take substantial action.

(l) "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities. Notwithstanding anything herein to the contrary, a social development company that is not complicit in the Darfur genocide shall not be considered a scrutinized company.

(m) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any new business operations; undertaking significant humanitarian efforts on behalf of one or more marginalized populations of Sudan; or through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

10287.2. (a) Within 90 days of the law taking effect operative date of this section, the Department of General Services shall identify, using its best efforts, and prepare; a list of scrutinized companies with which the state has a contract or could possibly have a contract with in the future. ~~"Best efforts" shall include all of the following, as appropriate: The Department of General Services shall update this list on or before July 1, 2008, and on or before each January 1 and July 1 thereafter.~~

(b) For purposes of this section, "best efforts" includes both of the following, as appropriate:

(1) Reviewing and relying, as appropriate, on publicly available information regarding companies with business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and governmental entities.

(2) Contacting companies with which the state has a contract and that have business operations in Sudan.

~~(b) The list shall be presented to the Legislature on or before April 1, 2008.~~

(c) On or before April 1, 2008, and on or before each January 1 thereafter, the Department of General Services shall present to the Legislature the most recent list described in subdivision (a).

1 10287.3. (a) A state agency shall not enter into a contract on
2 or after April 1, 2008, for construction, alteration, repair,
3 improvement, professional services, materials, supplies, or
4 equipment *in the amount of one hundred thousand dollars*
5 *(\$100,000) or more* with a contractor that is on the scrutinized
6 companies list prepared pursuant to Section 10287.2.

7 ~~(b) A state agency shall not enter into any contract on or after~~
8 ~~April 1, 2008, for the acquisition of goods or services in the amount~~
9 ~~of one hundred thousand dollars (\$100,000) or more with a~~
10 ~~contractor that is on the scrutinized companies list prepared~~
11 ~~pursuant to Section 10287.2.~~

12 10287.4. A state agency shall require each prospective bidder
13 that submits a bid or proposal with respect to any contract to submit
14 a statement by which the bidder swears under penalty of perjury
15 that the prospective bidder is not a scrutinized company. *submit a*
16 *statement under penalty of perjury disclosing all business*
17 *operations between the prospective bidder and the government of*
18 *Sudan.*

19 10287.5. This act shall be repealed upon affirmative action of
20 the Legislature. Provided, that in determining whether to repeal
21 this act, by way of suggestion and guidance only and without
22 binding or in any way inhibiting the discretion of future sessions
23 of the Legislature, it is submitted that the occurrence of any of the
24 following should be construed and deemed to be a basis for
25 repealing this act:

26 (a) The Congress or President of the United States declares the
27 Darfur genocide has been halted for at least 12 months.

28 (b) The United States revokes all sanctions imposed against the
29 government of Sudan.

30 (c) The Congress or President of the United States declares the
31 government of Sudan has honored its commitments to cease attacks
32 on civilians, demobilize and demilitarize the Janjaweed and
33 associated militias, grant free and unfettered access for deliveries
34 of humanitarian assistance, and allow for the safe and voluntary
35 return of refugees and internally displaced persons.

36 (d) The Congress or President of the United States, through
37 legislation or executive order, declares mandatory divestment of
38 the type provided for in this act interferes with the conduct of
39 United States foreign policy.

1 (e) Such other circumstances as the Legislature determines to
2 warrant the discontinuance of the provisions of this chapter.

3 10287.6. (a) If any one or more provision, section, subsection,
4 sentence, clause, phrase, or word of this act or the application
5 thereof to any person or circumstance is found to be invalid, illegal,
6 unenforceable or unconstitutional, the same is hereby declared to
7 be severable and the balance of this act shall remain effective and
8 functional notwithstanding such invalidity, illegality,
9 unenforceability, or unconstitutionality.

10 (b) The Legislature hereby declares it would have passed this
11 act, and each provision, section, subsection, sentence, clause,
12 phrase or word thereof, irrespective of the fact that any one or
13 more provision, section, subsection, sentence, clause, phrase, or
14 word be declared invalid, illegal, unenforceable or unconstitutional,
15 including, but not limited to, each of the engagement, divestment,
16 and prohibition provisions of this legislation.

17 SEC. 2. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.